

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

CHRISTOPHER BARBOUR,)	
)	
Petitioner,)	
)	
v.)	No. 2:01-cv-612-ECM
)	
JOHN HAMM, Commissioner,)	
Department of Corrections, et al.,)	
)	
Respondents.)	

RESPONDENTS’ MOTION FOR LEAVE FOR DISCOVERY

Come now Respondents, by and through the Attorney General for the State of Alabama, and move this Court for additional discovery based on the following grounds:

1. Rule 6(a) of the Rules Governing Section 2254 provides that this Court may, for good cause, authorize discovery to aid developing facts to determine whether an evidentiary hearing is necessary. (Docs. 202, 224.) *See generally Bracy v. Gramley*, 520 U.S. 899, 908–09 (1997) (“[W]here specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry.”) (quoting *Harris v. Nelson*, 394 U.S. 286, 300 (1969)).

2. On May 16, 2023, in his request to depose witnesses, Barbour disclosed that he had retained “mental health expert” Dr. Catherine Boyer. (Doc. 357 at n.2; *see also* Doc. 363 at n.6.) In Barbour’s subsequent witness list, he named Dr. Boyer as a potential witness to rebut Dr. Glen King’s testimony.¹ (Doc. 2 at n.2.) As previously noted, Dr. King intends to testify regarding Barbour’s claim that his confession was coerced or false. (Doc. 363 at n.6.) Barbour’s allegations that his confession is a “false” confession and that it was the result of coercive acts have been at the forefront of his claim regarding actual innocence. As such, any reports prepared by Dr. Boyer (or that she intends to prepare), as well as supporting data and/or documentation relied on by Dr. Boyer to support her opinions, are relevant if Barbour calls Dr. Boyer as an expert witness.

Wherefore, Respondents respectfully request this Court order that Barbour provide a copy of any reports by Dr. Boyer that Barbour intends to submit in support of his claim, as well as any supporting data and/or documentation relied on by Dr. Boyer, pertaining to this matter within five days² or on or before June 5, 2023, as to

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1. Any objections that Respondents may file regarding Dr. Boyer will be filed separately and in accordance with this Court’s scheduling order.
 2. Notably, Barbour has been aware since May 23, 2023, that Dr. King will be called to address the false/coerced confession claim. (Doc. 363.) Likewise, Barbour has known, at a minimum, since May 16, 2023, of his intent to call Dr. Boyer as a potential witness. Thus, any burden for the requested deadline is not outweighed by the necessity of disclosure so that Respondents may prepare for the upcoming evidentiary hearing.

allow Respondents an opportunity to prepare for the upcoming evidentiary hearing, including raising appropriate objections by this Court's June 7, 2023, deadline.

Respectfully submitted,

Steve Marshall (MAR083)

Attorney General

By:

s/Audrey Jordan

Audrey Jordan

Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will provide notification of such filing to the following CM/ECF participants: **George Kendall, Samuel Spital, Nicola Cohen, Santino Coleman, and Miriam Gohara.**

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